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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HARRELL, ROBERT B

ART UNIT

PAPER NUMBER

2142

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/905,647

Applicant(s)

WELTER ET AL.

Examiner

Robert B. Harrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2001 et al.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-77 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 31-77 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 02 October 2001 et al. is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20011226.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: see attached Office Action.

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1. Claims 31-77 are presented for examination.
2. Claims 1-30 have been cancelled by the Preliminary Amendment filed 1/29/2002 (page 1).
3. The Substitute Specification, from which all reference shall be made, filed 1/29/2002, is acceptable and has been entered into this application.
4. All United States Applications mentioned in the disclosure of this application must be updated with corresponding United States Patent Numbers or their status (i.e., pending, abandoned, exc...).
5. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
6. Drawings, and drawings amendments, filed to date (including those of 10/2/2001, 1/24/2002, and 1/29/2002) are acceptable and have been entered into this application. However, it is not clearly certain if figure 1 is Prior Art per page 2 (paragraph [0006]) to page 3 (paragraph [0009]). If figure 1 is prior art, it must be so labeled.
7. Each figure should be individually mentioned in the Brief Description of the Drawings (i.e., on page 6 (line 13) use "Figures 3A, 3B, 3C, 3D, are 3E" and not a grouped list as provided on that line, same for other such figures). Thus the Specification is objected to for informal matters.
8. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks TM, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., claim 76 is concatenated with claim 75). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
9. Use of active hyperlink and/or other forms of browser executable code is improper (see MPEP 608.01) and must be removed (see page 12 as one example, all others must also be removed). The reason being many OCR softwares will automatically associate (convert) such as an active (clickable) URL. Also, due to the dynamic nature of such links, they tend to become disabled rather than not in a relatively short time compared to the life of a Patent
10. The following is a quotation of the second paragraph of 35 U.S.C 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 31-77 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "the computer"--claims 31, 53, 54 (line 1)[suggest deleting "the"];
- b) "said formatted"—claim 55.

12. As to 11 (a-b) above, these are but a few examples of numerous cases where clear antecedent bases are lacking and not an exhausting recital. Any other term(s) or phrase(s) over looked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent bases also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent bases for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent bases are lacking can be viewed as non-responsive.

13. Per claim 77 (last two lines) it is not certain if the test configuration file is created based on just the test or the results of the test; that is, the claim is incomplete as most testing is conducted and yet the configuration file appears to be formulated only on the original test itself with intermediate results ignored by the claim.

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

A person shall be entitled to a patent unless -

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

15. Claims 31-77 are rejected under 35 U.S.C. 102 (e) as being anticipated by Dantressangle (US 6,446,120 B1).

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16. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions.

17. Per claim 31, Dantressangle taught a method (e.g., see Abstract (line 1 (second word))) for creating a web transaction test (e.g., see Abstract (line 2 (second to last word))), the method comprising computer-implemented steps of:

- a) sending formatted information (e.g., see figure 4 (402) and/or figures 8-9) to a web browser (e.g., see col. 10 (line 31- et seq.));
- b) in response to sending the formatted information, receiving a formatted message (e.g., see figure 12 and col. 11 (line 50-et seq.)); and,
- c) developing a test configuration file (e.g., see figure 4 (404) and figure 5 (504)) from the formatted message (e.g., see Title, Abstract, and col. 5 (line 66-et seq.)).

18. Per claim 32-52 see figure 5 (500) which could be automatic without any restriction excluding manual intervention per col. 7 (lines 3-18) with the layout form of figures 8 and 9 having entries filled from a list of first available alternatives (i.e., port 8081 over any known alternative open ports (i.e., port 80)) influenced by information contained on a web site (a web site having port 23 closed) and second alternatives (i.e., Test Host) as influenced by which list of available alternatives were selected all in HTML and HTTP format suggested by figure 12 using TCP/IP (per col. 1 (line 13) for testing all web related items (per col. 4 (line 35-et seq.)) such as URLs, Links, Radio Buttons, frames, and other such Web Based items, scheduled for at least immediate testing (or OS based software launching) with window information and repetition information as shown in figure 8 for a site to be tested ("802" of figure 8) for compared test results (per figure 13 (1308)) from looping through the test which yield second formatted information.

19. Per claims 53-77, these claims do not teach or defined above the correspondingly rejected claims given above, and are thus rejected for the same reasons given above.


20. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

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22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey, can be reached on (571) 272-3896 . The fax phone number for all papers is (703) 872-9306.

23. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.


ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2142